

E-FILED ON

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12 MICHAEL PETERSEN

UNITED STATES BANKRUPTCY COURT**DISTRICT OF NEVADA**

13 In Re:) CASE NO.: BK-S-06-10725 LBR

14 USA COMMERCIAL MORTGAGE) DEPT. NO.:
 15 COMPANY,)
 16 Debtor.) BK-S-06-10726 LBR
 17) BK-S-06-10727 LBR
 18) BK-S-06-10728 LBR
 19) BK-S-06-10729 LBR

20 In Re:) Chapter 11

21 USA CAPITAL REALTY ADVISORS, LLC,)
 22) Jointly Administered Under
 23) Case No. BK-S-06-10725 LTR

24 In Re:)
 25 USA CAPITAL DIVERSIFIED TRUST) MICHAEL PETERSEN'S OPPOSITION TO
 26 DEED FUND, LLC,) TWENTY-FOURTH OMNIBUS
 27) OBJECTION OF THE USACM
 28) LIQUIDATING TRUST TO CLAIMS
 29) ASSERTING SECURED STATUS

30) Date: April 26, 2007

31) Time: 9:30 A.M.

32 In Re:)

33 USA CAPITAL FIRST TRUST DEED FUND,))

34 LLC,))

35 Debtor.))

36 In Re:))

37 USA SECURITIES, LLC,))

Debtor. }

COMES NOW, Creditor, MICHAEL PETERSEN (“PETERSEN”), by and though his counsel of record, O'REILLY LAW GROUP, LLC, hereby files his Opposition to the Twenty-Fourth Omnibus Objection of the USACM Liquidating Trust to Claims Asserting Secured Status.

In support of his Opposition, PETERSEN respectfully states as follows:

I. Introduction

In approximately 1999, PETERSEN invested with USA Commercial Mortgage (“USACM”). His investment was in the amount of \$1.5 million.

Upon learning of USACM filing for bankruptcy and pursuant to Fed. R. of Bankr. P. 3001, PETERSEN filed a proof of claim, Proof of Claim Number 10725-00754. *See* copy of Proof of Claim attached hereto as **Exhibit A**.

II. Argument

Pursuant to Fed. R. of Bankr. P. 3001, a proof of claim is a written statement setting forth the creditor's claim and shall conform substantially to the appropriate Official Form. *See* Fed. R. of Bankr. P. 3001(a). PETERSEN's proof of claim is properly executed, conformed to the "Official Form" and was properly filed. Therefore, the claim constitutes *prima facie* evidence of the validity and amount. *See* 11 U.S.C. 502(a); *U.S. v. Oxford Finance, Inc. (In re Medina)*, 205 B.R. 216 (9th Cir. BAP 1996).

If an objection is then filed as to the proof of claim, the objector must then “produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claims themselves.” *U.S. v. Oxford Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996) quoting *In re Murgillo*, 176 B.R. 524, 529 (9th Cir. BAP 1995) *re Holm*, 931 F.2d 620, 623 (9th Cir. 1991).

1 USACM Liquidating Trust has filed an omnibus objection to the secured claim filed by
2 PETERSEN. It now has the burden of producing evidence, as strong as the proof of claim itself, to
3 defeat the claim. The burden will not shift back to PETERSEN until such evidence is presented.
4

5 **III. Conclusion**

6 Therefore, the USACM Liquidating Trust has the burden of producing the required
7 evidence to defeat the secured claim as filed by PETERSEN.

8 DATED: April 19, 2007

O'REILLY LAW GROUP, LLC

9 By: Claudia K. Cormier

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PROOF OF SERVICE

I HEREBY CERTIFY that I am employed in the law offices of O'REILLY LAW GROUP, LLC and that, on this 19 day of April 2007, served the above and foregoing **MICHAEL PETERSEN'S OPPOSITION TO TWENTY-FOURTH OMNIBUS OBJECTION OF THE USACM LIQUIDATING TRUST TO CLAIMS ASSERTING SECURED STATUS** in accordance with N.R.C.P. 5(b) by placing a copy of same in a sealed envelope, with postage fully prepaid thereon, and sending via U.S. mail to the following:

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For more information about the study, please contact Dr. Michael J. Hwang at (319) 356-4000 or via email at mhwang@uiowa.edu.

An Employee of O'REILLY LAW GROUP, LLC

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**USA COMMERCIAL MORTGAGE/MICHAEL PETERSEN
CASE NO.: BK-S-06-10725- LBR**

EXHIBIT "A"

Penalty for presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 AND 361

INSTRUCTIONS FOR FILING PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to the general rules.

DEFINITIONS

DEBTOR

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

CREDITOR

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

PROOF OF CLAIM

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the court appointed Claims Agent, BMC Group, at the address listed on the reverse side of this page

SECURED CLAIM

A claim is a secured claim to the extent that the creditor has a lien on the property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before a bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also Unsecured Claim.)

UNSECURED CLAIM

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

UNSECURED PRIORITY CLAIM

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM (IF NOT ALREADY PROPERLY FILLED IN)

Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed, the name of the debtor in the bankruptcy case, and the bankruptcy case number.

Debtor Name

	Case No.
USA Commercial Mortgage Company	06-10725 (LBR)
USA Capital Realty Advisors, L.L.C	06-10726 (LBR)
USA Capital Diversified Trust Deed Fund, L.L.C	06-10727 (LBR)
USA Capital First Trust Deed Fund, L.L.C	06-10728 (LBR)
USA Securities, L.L.C	06-10729 (LBR)

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If (a) anyone else has already filed a proof of claim relating to this debt, (b) if you never received notices from the bankruptcy court about this case, (c) if your address differs from that to which the court sent notice, or (d) if this proof of claim replaces or amends a proof of claim that was already filed, check the appropriate boxes on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in the last four digits of your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Classification of Claim

Secured Claim:

If your claim is a secured claim, check the appropriate boxes in this section. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured (See DEFINITIONS, above).

Unsecured Priority Claim:

If your claim is an unsecured priority claim (See DEFINITIONS, above), check the appropriate boxes in this section, and state the amount entitled to priority. A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

Unsecured Nonpriority Claim:

If your claim is an unsecured nonpriority claim, sometimes referred to as a "general unsecured claim" (See DEFINITIONS, above), check the appropriate box in this section. If your claim is partly secured and partly unsecured, state here the amount that is unsecured. If part of your claim is entitled to priority, state here the amount not entitled to priority.

5. Total Amount of Claim at Time Case Filed:

Fill in the applicable amounts, including the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

6. Credits:

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

7. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

Please read – important information: upon completion of this claim form, you are certifying that the statements herein are true.

Be sure to date the claim and place original signature of claimant or person making the claim for creditor where indicated at the bottom of the claim form. Please type or print name of individual under the signature. Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable."

Return claim form and attachments, if any. If you wish to receive an acknowledgement of your claim, please enclose a self-addressed stamped envelope and a second copy with any attachments to the Claims Agent, BMC Group at the address on the front of this form.

BMC
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